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Nos. 03–1164, 03–1165

In the Supreme Court of the United States

ANN VENEMAN, SECRETARY OF AGRICULTURE, *et al.*,
Petitioners,
v.
LIVESTOCK MARKETING ASSOCIATION, INC., *et al.*,
Respondents.

NEBRASKA CATTLEMEN, INC., *et al.*,
Petitioners,
v.
LIVESTOCK MARKETING ASSOCIATION, INC., *et al.*,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF OF AMICI CURIAE THAD COCHRAN, BOB GOODLATTE, AND CHARLES W. STENHOLM IN SUPPORT OF PETITIONERS

DAVID A. BONO
(Counsel of Record)
GERALD P. NORTON
JAMES G. RAFFERTY
SIMON A. STEEL
HARKINS CUNNINGHAM LLP
801 Pennsylvania Ave., N.W., Ste. 600
Washington, D.C. 20004–2615
(202) 973–7600

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QUESTIONS PRESENTED

1. Whether the Eighth Circuit erred in holding that the Beef Promotion and Research Act of 1985 ("Beef Act"), 7 U.S.C. §§ 2901 *et seq.*, and regulations promulgated thereunder--which impose assessments on beef producers and importers to fund research, education, and promotional activities carried cut by special administrative bodies created by Congress for the express purpose of furthering important governmental objectives under the direct supervision and control of the Secretary of Agriculture--are "unconstitutional and unenforceable."

2. Whether the Beef Promotion and Research Act of 1985 (Beef Act), 7 U.S.C. §§ 2901 *et seq.*, and the implementing Beef Promotion and Research Order (Beef Order), 7 C.F.R. Part 1260, violate the First Amendment insofar as they require cattle producers to pay assessments to fund generic advertising with which they disagree.

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Pursuant to Rule 37.3 of the Rules of this Court, *amici curiae* submit this brief in support of the Petitioners.[1]

INTEREST OF AMICI CURIAE

Senator Thad Cochran and Representatives Bob Goodlatte and Charles W. Stenholm (hereinafter referred to as the "*Amici*") are all Members of the 108th Congress. Sen-

[1] Pursuant to Rule 37, Petitioners and Respondents have consented to the filing of this brief. Their consent letters are on file with the Clerk. No counsel for any party authored this brief, either in whole or in part. No persons other than *amici curiae*, or their Counsel of Record, have contributed financially to the preparation of this brief.

ator Cochran is the Chairman of the Senate Committee on Agriculture, Nutrition and Forestry. Representatives Goodlatte and Stenholm are, respectively, Chairman and Ranking Minority Member of the House Committee on Agriculture. As such, *Amici* engage in congressional oversight of the Department of Agriculture, including its responsibilities under the Beef Promotion and Research Act of 1985 ("Beef Act"), 7 U.S.C. §§ 2901 *et seq.*, and other statutes and regulations that affect the beef industry or provide for generic promotions of other agricultural commodities. *Amici* have also played a direct role in the enactment of legislation at issue in this case, and each represents many constituents who either depend on the beef industry for their livelihood or benefit from public information and research on beef products as consumers.

For almost 70 years, Congress has employed various mechanisms that provide for the generic promotion of beef and other agricultural commodities. Congress has consistently viewed such generic promotion as a critical part of its efforts to both promote healthy diets and provide stability and security to the cyclical agricultural economy. That stability benefits not only the millions of Americans who rely on the agricultural economy for their livelihoods, but also the American economy generally.

The Beef Act is thus not the first example of a Congressional enactment that has provided for the generic promotion of beef. Generic promotion has long been used by government to balance the demand for agricultural products with frequently overabundant supply. The Beef Act provides a mechanism, administered by the Secretary of Agriculture and subject to congressional oversight, for beef's generic promotion.

By virtue of their congressional oversight responsibilities, *Amici* are familiar with the operation and effectiveness of the Beef Act in the 19 years since its enactment. In their view, it is an example of how government can use persuasion effectively to implement policy decisions with efficiency and without displacing market forces. Indeed, the leading study of the Act's effectiveness estimates a

rate-of-return of $5.67 for every dollar expended on generic beef promotion. *See* Dr. Ron Ward, *The Beef Check-off Impact on U.S. Beef Demand*, 50 YEARS OF PROGRESS–WHAT DOES THE FUTURE HOLD?, at 39–46 (Proceedings of the 50th Ann. Univ. of Fla. Beef Cattle Short Course, 2001).

However, the Court of Appeals' decision in this case invalidated the Beef Act in its entirety. *Livestock Mktg. Ass'n v. U.S. Dep't of Agric.*, 335 F.3d 711 (8th Cir. 2003). The Court of Appeals elevated the commercial preferences of a small minority of beef industry participants above the policy decisions of Congress. If allowed to stand, this decision would override Congress's judgments concerning the needs of the Nation's beef market and suppress the government speech called for in the Beef Act.

Amici believe that the Court of Appeals' decision imperils the Government's ability to communicate its views to the American people. Through the democratic processes, federal legislation has been enacted to disseminate the Government's determinations with respect to the nutritional and economic value of beef consumption. The decision of the Court of Appeals, if left to stand, would repress government speech and frustrate the important public policies served by the Beef Act.

Amici fully endorse the substantive constitutional analysis set forth in the Petitions. In addition, *Amici* believe that an examination of both the context of the Beef Act's enactment and its design may serve to illuminate the application of the government speech doctrine in this case. *Amici* therefore seek to provide information to the Court respecting the governmental viewpoint that Congress intended to promote in the Beef Act and the mechanism that Congress chose for the pursuit of that government speech. *Amici* further seek to highlight the dangerous practical implications of the Court of Appeals' decision for the Government's ability to communicate effectively with the American people on nationally significant policy matters.

SUMMARY OF ARGUMENT

As set forth in the Petitions, the Court should find that the Beef Act's generic promotion program is government speech unconstrained by the First Amendment. Congress has long been of the view that the generic promotion of beef is a governmental matter of national significance, for reasons that include nutrition and the need to balance demand with frequently overabundant supply. Congress has therefore provided mechanisms for the generic promotion of beef and other agricultural commodities.

The earliest such federal program began during the Depression and continued until the mid-1970's. The United States Department of Agriculture ("USDA"), under authority of a Congressional enactment, directly formulated and disseminated generic promotions of beef and various other agricultural commodities.

Currently, generic beef promotion proceeds under the direct supervision of the Secretary of Agriculture, who, under the Beef Act, is responsible for appointing a Beef Board and overseeing and approving its efforts to implement the generic promotion authorized in the Act. In either case, generic agricultural promotion is being undertaken pursuant to federal law, under the authority of the federal government, and in pursuit of important governmental policies that are embodied in federal statutes and regulations.

There can be no serious question that, when USDA undertook direct generic promotions of beef and other agricultural commodities, it was engaging in government speech that could not be restrained on First Amendment grounds. *Amici* respectfully submit that the Court should draw the same conclusion with respect to the generic beef promotion that has been undertaken under authority of the Congressionally-enacted Beef Act and the active supervision and oversight of the Secretary of Agriculture. Congress is democratically accountable to the American people for its decision to engage in this communication, and the Court should hold that the message Congress has

chosen in the Beef Act should not be suppressed based on the objection of a minority of beef producers.

ARGUMENT

The decision of the Court of Appeals should be reversed. As set forth in the Petitions, the generic promotion program enacted by Congress and implemented under the Secretary of Argriculture is government speech, which is not constrained by the First Amendment. Even if constrained by the First Amendment, it would be constitutional under the intermediate scrutiny applicable to regulation of commercial speech. The blanket injunction that the Court of Appeals upheld against implementation of the Act, including its research and information aspects, was also overbroad.

Amici believe they can be most helpful to the Court by explaining how promotional activities under the Beef Act constitute government speech. The history, context, and implementation of the Beef Act demonstrate that it has long been Congress's decision that the generic promotion of beef and other agricultural commodities is a governmental matter of national significance. Congress has also maintained statutory structures that vest the Secretary of Agriculture with ultimate decision-making authority over the generic promotion of beef. The Court should therefore find that generic beef promotion under the Beef Act constitutes government speech that is not constrained by the First Amendment.

I. THE HISTORY, CONTEXT AND IMPLEMENTATION OF THE BEEF ACT DEMONSTRATE THAT CONGRESS'S DECISION TO PROMOTE BEEF GENERICALLY INVOLVES GOVERNMENT SPEECH IN PURSUIT OF PUBLIC POLICY OBJECTIVES, NOT FACILITATION OF PRIVATE SPEECH

The Beef Act reflects Congress's considered judgment that the consumption of beef is in the public interest. It also embodies Congress's view that this goal is best pursued through the generic promotion of beef. In imple-

menting a governmental program of generic beef promotion, Congress specifically vested the Secretary of Agriculture with authority to appoint a Beef Board, and it also granted her supervisory control over that Board. This Court should find that generic beef promotions undertaken pursuant to the Beef Act constitute government speech.

A. The History of Government Speech Generically Promoting Beef and Other Agricultural Commodities.

Successive Congresses and Administrations have determined that a healthy diet and a stable and prosperous agricultural economy are both important governmental objectives. They have also determined that, in matters of food consumption policy, advice and persuasion are often the most appropriate and effective tools. Consequently, agricultural producers and consumers alike have benefited from almost 70 years of federal programs that generically promote beef and various other agricultural commodities.

The earliest federal program for the generic promotion of beef and other agricultural commodities grew out of the Great Depression and continued for approximately thirty-five years. From 1939 until the mid-1970's, the USDA engaged in the direct generic promotion of beef and other agricultural commodities through the "Plentiful Foods Program." USDA officials formulated the content of Plentiful Foods Program generic promotions and directly undertook the dissemination of that content.

The Plentiful Foods Program proceeded under authority of Section 32 of the Act of August 24, 1935 (commonly referred to as "Section 32"). *See* Pub. L. No. 74–320, 49 Stat. 750, 774 (1935) (codified as amended at 7 U.S.C § 612(c)). Congress enacted Section 32 during the Depression, "to assist farmers suffering from price-depressing surpluses." GEOFFREY S. BECKER, FARM AND FOOD SUPPORT UNDER USDA'S SECTION 32 PROGRAM, at 1 (Congressional Research Service Report 20235) (1999). Section 32 created a permanent appropriation equal to 30 percent of

annual U.S. customs receipts in order to fund programs to, *inter alia*, "encourage the domestic consumption" of "agricultural commodities and products thereof," including beef, "by increasing their utilization." 49 Stat. at 774.

USDA, in turn, undertook the Plentiful Foods Program to "work[] with the food trade to promote the distribution and consumption of those foods . . . which are in surplus supply." H.R. REP. NO. 83–1770 (1954), *reprinted in* 1954 U.S.C.C.A.N. 2477, 2481, 2484, 2486. *See generally* OFFICE OF ECONOMIC DEVELOPMENT, CATALOG OF FEDERAL DOMESTIC ASSISTANCE (1970) at 4–70 (Plentiful Foods Program "assists producers and marketing groups in stimulating special merchandising efforts and consumer interest in seasonally available and other abundant foods"). For approximately thirty-five years, USDA officials engaged in whatever direct generic promotion they deemed necessary to induce consumer demand for beef and other agricultural products that were in surplus supply. *See e.g.*, Bob Talbert, *Mustard, Two Slices of Bread, and A Lazy Earl named Sandwich*, DETROIT FREE PRESS, Aug. 18, 1969, at 11 (reporting on "the Department of Agriculture crowd promoting National Sandwich Month with such submarines as a 7-foot, 75-pounder which fed 300 people at Boyne Mountain"). *See generally Agriculture–Environmental and Consumer Protection Appropriations for 1973: Hearings Before a Subcomm. of the House Comm. on Appropriations*, 92nd Cong. 738 (1972) ("effectiveness of the program depends upon the direct contact which field workers employ on a continuing basis"); JOHN P. DOLL, V. JAMES RHODES, JERRY G. WEST, ECONOMICS OF AGRICULTURAL PRODUCTION, MARKETS, AND POLICY, at 455–56 (Richard D. Irwin, Inc., and Irwin-Dorsey Ltd., eds., 1968) (Plentiful Foods Program "primarily informational in nature").

For example, as part of the Plentiful Foods Program, USDA produced and disseminated a monthly *Smart Shopper Food Guide* publication "to help agricultural producer groups and the food trade industry market food abundance through normal channels of trade-by calling

consumer attention to the time for buying foods at the peak of quality, and most attractive prices." USDA CONSUMER AND MARKETING SERVICE, SMART SHOPPER FOOD GUIDE (Aug. 1969) (promoting consumption of, *inter alia*, "variety meats," "luncheon meats," "canned chopped meat," and "canned meat"). *See generally Agriculture–Environmental and Consumer Protection Appropriations for 1974: Hearings Before a Subcomm. of the House Comm. on Appropriations*, 93rd Cong. 517 (1973) ("The *Smart Shopper Food Guide* reflects current smart buys (utilizing Plentiful Foods, where applicable) for the current month, as an aid in helping family food shoppers select a balanced and varied diet.") USDA also issued monthly lists of foods in plentiful supply, which were sent to news outlets along with press releases that contained recipes and story lines to be used as the basis for consumer-directed features and articles. *See, e.g., Plentiful Foods List: Variety Keynotes August Selection*, DALLAS MORNING NEWS, July 31, 1969, at 6–E ("Wide selection is the key to the August plentiful foods list of the U.S. Department of Agriculture.").[2] Consumers came to rely on the Plentiful Foods

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[2] *See also Plentiful Foods for August*, SPARTANBURG HERALD, Aug. 14, 1969, at 38 (reporting that "[s]tocks of wheat were estimated recently as 32 percent greater than last year.... USDA's Consumer and Marketing Service says that, in addition to wheat products, its August plentiful foods list contains many other items."); *USDA Report–Nutritious Wheat for Daily Food*, DALLAS TIMES HERALD, Aug. 14, 1969, at 24 ("The U.S. Department of Agriculture's Consumer and Marketing Service reports plentiful supplies of wheat and wheat products, and that includes bread."); *Tasty Sandwiches for Summer Spread*, NATCHEZ DEMOCRAT, Aug. 17, 1969, at 9 ("USDA's Consumer and Marketing Service reports good supplies of wheat products, plus tasty sandwich fillings like peanut butter, fresh summer vegetables and onions."); *Sandwich Month of August Promises Excellent Eating*, DALLAS MORNING NEWS, Aug. 7, 1969, at 2–E ("reported plentiful by USDA's Consumer and Marketing Service are peanuts and peanut products, fresh pears, nectarines, watermelons, limes, summer vegetables and onions."); *Sandwiches Are For Everybody*, JACKSON DAILY NEWS, Aug. 7, 1969, at 55 (because "wheat products are in particularly abundant supply, economy-minded homemakers will find sandwiches a wise choice for family meals, USDA's Consumer and Marketing Service ad-

Program's generic promotion of beef and other foods when making consumption choices. *See, e.g.*, Rubye Smith, *List of Plentiful Foods Is Valuable Aid To Homemakers and Institutional Buyers,* PARIS POST-INTELLIGENCER, Aug. 12, 1969, at 7 ("Homemakers and Institutional food buyers have found that the monthly list of plentiful foods from the United States Department of Agriculture can be a valuable aid. As a rule, foods in best supply can help stretch the food dollar to the best advantage. Too, there's usually a better selection from foods in good supply.")

The governmental generic promotions undertaken through the Plentiful Foods Program were directed towards balancing consumer demand with cyclical supplies of beef and various other agricultural commodities, which were often overabundant. By focusing the attention of consumers and large-scale food buyers on beef or other particular agricultural products at the critical time, the Plentiful Foods Program stimulated sales when peak supplies were moving to market. And, by successfully stimulating demand, the Plentiful Foods Program avoided large-scale government purchases to remove surplus supply from the market, thereby stabilizing producer prices, the agricultural economy, and the broader American economy without displacing market forces.

When USDA ended the Plentiful Foods Program in the mid-1970's, Congress enacted a voluntary program that allowed generic beef promotion, *see* Beef Research and Information Act, Pub. L. No. 94–294, 90 Stat. 529 (1976), but experience taught that such voluntary measures were not "effective" in "helping balance supply and demand." S. REP. NO. 99–145 (1985), *reprinted in* 1985 U.S.C.C.A.N. 1676, 1677. Therefore, in 1985, Congress enacted the Beef Act, the purpose of which was "to provide, as far as it can be done in legislation of this kind, the basis for an eco-

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vises."); *August is Sandwich Month,* MOBILE REGISTER, Aug. 14, 1969, at 22 ("Stocks of wheat were estimated recently as 32 percent greater than last year and 59 percent more than two years ago. USDA's Consumer and Marketing Service says that, in addition to wheat products, its August plentiful foods list contains many other tasty items").

nomic climate in which efficient American family farmers can survive the grim squeeze that has already driven too many of them to or close to the brink or ruin." H.R. REP. NO. 99–271(I) (1985), *reprinted in* 1985 U.S.C.C.A.N. 1103, 1111. With respect to cattle farming in particular, Congress found that the experiment with a voluntary beef checkoff program had failed to achieve a sustainable balance between beef supplies and beef demand. "Despite decreasing cattle numbers, fed cattle prices are now (summer of 1985) at the lowest point in 7 years. In addition, per capita consumption of beef has dropped drastically." *Id.* at 1289. As a result, "[t]he beef cattle industry continue[d] to face cash-flow problems and eroding equities." *Id.* at 1113.

The legislative history of the Beef Act also demonstrates that Congress's concern was not limited to only cattle producers or even just the agricultural economy. To the contrary, Congress found that "farmers are not alone in feeling the effects of the current situation. Businesses, banks, and local institutions up and down a hundred main streets have been hurt." *Id.* at 1113. Thus, "[e]ven if we were willing to let important segments of agriculture collapse, we could not afford to do so because of the dangers this would pose to the entire national economy." *Id.* at 1111.

B. Governmental Speech Generically Promoting Beef Through the Beef Act

Congress enacted the Beef Act to implement a governmental program of generic beef promotion that is similar to the generic promotion of beef and various other agricultural commodities under USDA's former Plentiful Foods Program. The Beef Act authorizes generic beef promotion by the Beef Board, a Congressionally authorized entity, whose members all are appointed by the Secretary of Agriculture and which undertakes all of its promotional activities under her direct supervision. It was Congress's decision in the Beef Act to implement generic beef promotion through a Beef Board, and also its decision that the Board be directly appointed and supervised

by the Secretary of Agriculture. This Court should conclude that generic promotions under the Beef Act are government speech.

The text of the Beef Act sets forth the governmental purpose behind generic beef promotion. Congress enacted the Beef Act for the express purpose of serving "the public interest," 7 U.S.C. § 2901(b), including the public interest in the "maintenance and expansion of existing markets for beef." *Id.* § 2901(a)(4). *Accord id.* § 2901(b). Congress specifically determined that the best way to pursue its policy goals was a "program of promotion and research designed to strengthen the beef industry's position in the marketplace." *Id.* § 2901(b).

Congress vested the Secretary of Agriculture with responsibility for overseeing the implementation of the important governmental policies embodied in The Beef Act. Thus, as noted, the Secretary is responsible for the composition of the Beef Board. She appoints members of the Beef Board after considering nominations from organizations deemed eligible under Congressionally mandated criteria. *See* 7 U.S.C. §§ 2904(1), 2905; 7 C.F.R. § 1260.141(b). The Secretary also retains the power to remove members from the Beef Board. 7 C.F.R. §§ 1260.211(b)(1), 213.

The Secretary's discharge of these appointment and removal powers demonstrates that she has exercised the critical supervisory responsibilities that Congress has vested in her. She has rejected applications of organizations that do not meet the statutory eligibility criteria. She has decertified at least one nominating organization. And the Secretary has removed at least one member of the Beef Board by seeking and accepting that person's resignation. *See Charter v. USDA*, 230 F. Supp. 2d 1121, 1124 (D. Mont. 2002).

The Secretary has similarly exercised her supervisory control over The Beef Board. She requires the Beef Board to give her notice of its meetings, so that she or a representative may attend. 7 C.F.R. §§ 1260.150(m). A USDA representative does in fact attend every meeting of

the Beef Board, its Operating Committee, and its Executive Committee. *See Charter,* 230 F. Supp. 2d at 1126 & 1138. USDA also maintains less formal consultative contacts with the Beef Board to provide feedback at the early stages of the project development process, the result of which is that "[s]ome proposed projects are not developed because . . . most ideas that do not comport with USDA objectives are quelled in their early stages." *Id.* at 1126. These contacts have also afforded an avenue for the USDA to itself create certain generic promotion under the Beef Act, including a USDA-originated initiative concerning minority livestock producers. *See id.*

The Secretary of Agriculture also has budget authority over Beef Act activities and has actively exercised that authority. No budget, plan, project, or contract approved by the Beef Board can become effective until it receives the Secretary's approval, 7 U.S.C. §§ 2904(4)(C), (6)(A), (6)(B); 7 C.F.R. §§ 1260.150(f)-(g); 7 C.F.R. §§ 1260.168(e)-(f), and the Secretary has required that the Beef Board submit to her an audit of its activities for each fiscal period. 7 C.F.R. § 1260.150(a). If the Secretary determines that a Beef Act project does not serve the purpose of the Act, she "denies funding for the project. The government mandates the beef checkoff assessments, and the Secretary of Agriculture maintains control over how the assessments are spent." *Charter,* 230 F. Supp. 2d at 1138 (citation omitted).

The Secretary has exercised her direct control over the Beef Board by promulgating several specific criteria for Beef Act projects. *See* 7 C.F.R. § 1260.169. Moreover, she has exercised this final approval authority by rejecting Beef Board proposals. For example, she rejected the Beef Board's proposal that it undertake a promotional campaign using a statement to the effect of, "Did you ever notice that when a person offers you a strange food, it tastes like chicken?" Such a campaign might have been beneficial to the private interest of the beef industry, but it would have harmed the poultry industry. USDA therefore rejected the Beef Board's proposal, recognizing the

broader governmental interest "in promoting, not disparaging, poultry," *Charter*, 230 F. Supp. 2d at 1138. The Secretary has thus exercised her control over Beef Act activities to insure that governmental speech under the Act not be transformed by the Beef Board into private speech representative of only one segment of the Nation's population.

Another indication that promotional activities undertaken under the Beef Act constitute governmental speech is the regulation providing that any patents, copyrights, inventions, or publications developed using funds collected under the Act are the property of the "U.S. Government as represented by the [Beef] Board." 7 C.F.R. § 1260.215. The Secretary has provided that the federal government is to be considered an owner of the projects and advertisements generated with funds collected under that Act because the Beef Board's promotional activities under the Beef Act are government activities.

Finally, the governmental nature of promotions under the Beef Act is demonstrated by Congress's continued legislative involvement. In the Commodity Promotion, Research, and Information Act of 1996, for example, Congress required the Beef Board and other commodity boards to conduct periodically "an independent evaluation of the effectiveness of the generic commodity promotion programs" and submit those evaluations to the Secretary of Agriculture. Pub. L. No. 104–127, § 501 (c), 110 Stat. 888, 1031 (1996). In this statute, Congress reaffirmed that "[g]overnment-supervised, generic commodity promotion programs" are "in the national public interest and vital to the welfare of the agricultural economy" in that they "further specific national governmental goals, as established by Congress" and operate "under the required supervision and oversight of the Secretary of Agriculture." *Id.* § 501(b). Specifically, generic commodity promotion is "designed to maintain or increase the overall demand for the agricultural commodity covered by the program . . . often by utilizing promotion methods and techniques that individual producers and processors typi-

cally are unable, or have no incentive, to employ," such as "produc[ing] nonideological and commercial communication the purpose of which is to further the governmental policy and objective" while being "of particular benefit to small producers who often lack the resources or market power to advertise on their own and who are otherwise often unable to benefit from the economies of scale available in promotion and advertising." *Id.*

II. AS THE COURT HAS PREVIOUSLY RECOGNIZED, THE FIRST AMENDMENT'S GUARANTEE OF FREE SPEECH DOES NOT RESTRICT GOVERNMENT SPEECH

There can be no serious question that, when the Government directly promoted beef and certain other agricultural commodities under the Plentiful Foods Program, it was engaging in government speech. *Amici* respectfully submit that the same conclusion should be drawn with respect to the generic beef promotion that has been undertaken under authority of the Beef Act and the active supervision and oversight of the Secretary, through the Beef Board that Congress required the Secretary to create.

Neither of the two features of the Beef Act on which Respondents have focused deprives generic Beef Act promotions of their status as government speech. Under the Beef Act, a Congressionally required and governmentally funded Beef Board disseminates the government's chosen message under the supervisory control of the Secretary. Even if the Beef Board were a private actor, however, the Court has previously recognized that communication of government speech through private speakers does not change the governmental character of such speech. *Rust v. Sullivan*, 500 U.S. 173, 192–95 (1991); *Sante Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 303 (2000); *Lebron v. Nat'l R.R. Passenger Corp.*, 513 U.S. 374, 400 (1995).

Nor does Congress's choice for funding the Beef Act by per-head assessments alter the conclusion that generic Beef Act promotions constitute government speech. This

Court has long recognized that Congress must be given "broad latitude" in its funding choices, reviewing such mechanisms with particular deference. *Regan v. Taxation With Representation of Wash.*, 461 U.S. 540, 547 (1983). After noting "a number of recent Congressional enactments designed to make various Federal regulatory programs partially or entirely self-financing," *Skinner v. Mid-America Pipeline Co.*, 490 U.S. 212, 216–16 (1989) (citations omitted), this Court has also stated that, "when the government appropriates public funds to promote a particular policy of its own it is entitled to say what it wishes." *Rosenberger v. Rector and Visitors of the Univ. of Va.*, 515 U.S. 819, 833 (1995). In this context, it should be of no moment that Respondents prefer a different policy than that which Congress has determined is appropriate. *See Board of Regents of the Univ. of Wis. Sys. v. Southworth*, 529 U.S. 217, 229 (2000) ("The government, as a general rule, may support valid programs and policies by taxes or other exactions binding on protesting parties.").

CONCLUSION

The judgment of the Court of Appeals should be reversed.

Respectfully submitted,

DAVID A. BONO
(Counsel of Record)
GERALD P. NORTON
JAMES G. RAFFERTY
SIMON A. STEEL
HARKINS CUNNINGHAM LLP

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